

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JASON OLIVER THOMPSON,**

**Petitioner,**

**v.**

**9:08-CV-1083  
(FJS/GHL)**

**ROBERT ERCOLE, Superintendent, Green  
Haven Correctional Facility,**

**Respondent.**

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**APPEARANCES**

**JASON OLIVER THOMPSON**

**95-A-3305**

Eastern New York Correctional Facility

Box 338

Napanoch, New York 12458

Petitioner *pro se*

**SCULLIN, Senior Judge**

**ORDER**

Currently before the Court are Magistrate Judge Lowe's November 14, 2008 Report and Recommendation, *see* Dkt. No. 2, and Petitioner's objections thereto, *see* Dkt. No. 4.

In his Report and Recommendation, Magistrate Judge Lowe concluded that, although Petitioner's petition was time-barred under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), *see* Dkt. No. 2 at 3, that was not the end of the analysis because Petitioner claimed actual innocence. *See id.* at 4. However, Magistrate Judge Lowe found that, because "Petitioner ha[d] not presented a credible claim of actual innocence . . . even if an actual-innocence exception to the AEDPA statute of limitations exist[ed], Petitioner ha[d] not

established that he [was] entitled to its benefits." *See id.* at 4. Despite this deficiency in Petitioner's petition, Magistrate Judge Lowe recommended that the Court provide Petitioner with an opportunity to file an amended petition if he claimed that his petition was, in fact, not time-barred. *See id.* at 5.

On December 8, 2008, Petitioner filed his objections to Magistrate Judge Lowe's Report and Recommendation. *See* Dkt. No. 4. In addition to taking issue with some of Magistrate Judge Lowe's findings, Petitioner primarily attempted to establish that he was, in fact, actually innocent and that, therefore, his petition was not time-barred. *See, generally*, Dkt. No. 4. Since it is clear that Petitioner continues to maintain that his petition is not time-barred, the Court will provide him with an opportunity to do what Magistrate Judge Lowe recommended; i.e., file an amended petition. Accordingly, the Court hereby

**ORDERS** that Magistrate Judge Lowe's November 14, 2008 Report and Recommendation is **ADOPTED** in its entirety; and the Court further

**ORDERS** that, should Petitioner claim that his petition is not, in fact, time-barred, he must file an amended petition **within thirty (30) days** of the filing date of this Order in which he must either (1) assert that he filed his state-court collateral proceedings before the expiration of the AEDPA statute of limitations, clearly listing the date(s) on which he properly **filed** his application(s) for state post-conviction or other collateral review concerning the subject conviction or (2) cite new, reliable evidence supporting his contention that he is actually innocent. The Court warns Petitioner that he may not incorporate any portion of any prior petition in his amended petition by reference; and the Court further


**ORDERS** that, if Petitioner does not file an amended petition within **thirty (30) days** of

the filing date of this Order, the Clerk of the Court shall enter judgment dismissing this action without further Order of this Court; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on Petitioner in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: November 13, 2009  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge